

07 MAY 1999



UNITED STATES DEPARTMENT OF COMMERCE  
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In re Application of  
ZABEAU et al  
Application No.: 09/011,307  
PCT No.: PCT/EP96/03480  
Int. Filing Date: 06 August 1996  
Priority Date: 07 August 1995  
Attorney's Docket No.: GUPLA0008  
For: RESISTANCE AGAINST WILT  
INDUCING FUNGI

DECISION

This decision is in response to applicant's Response to Notification of Missing Requirements filed 10 August 1998, which has been treated as a petition, requesting the issuance of a Notification of Acceptance assigning a 01 May 1998 completion date.

BACKGROUND

On 06 August 1996, applicants filed international application PCT/EP96/03480, which claims priority to European application 95401849.5, filed 07 August 1995. A Demand for international preliminary examination, in which the United States was elected, was timely filed on 12 February 1997. Accordingly, the 30-month period for commencement of the national stage in the United States expired at midnight on 09 February 1998.<sup>1</sup>

On 09 February 1998, the United States Designated/Elected Office (DO/EO) received from applicants a transmittal letter for entry into the national stage in the United States which was accompanied by *inter alia* the requisite U.S. basic national fee and a copy of the international application published in English.

On 21 July 1998, the United States DO/EO mailed to applicants a Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (Form PCT/DO/EO/905) informing applicants that the requirements under 35 U.S.C. 371 have not been completed, as applicants have not submitted an oath or declaration in compliance with 37

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<sup>1</sup> 07 February 1998 fell on a Saturday.

CFR 1.497. Applicants were given one month to submit the oath or declaration and pay the required surcharge under 37 CFR 1.492(e).

On 10 August 1998, applicants filed the present response requesting the issuance of a Notification of Acceptance assigning a 01 May 1998 completion date under 35 U.S.C. 371. The petition alleges that an executed declaration was filed in the United States DO/EO on 01 May 1998 but was returned to applicants without explanation with a concurrently filed assignment recordal. In support of the petition, applicants have attached thereto: 1) a copy of an itemized receipt stamped by the U.S. Patent and Trademark Office with a receipt date of 01 May 1998; 2) the original executed declaration; 3) an original transmittal letter; and 4) a copy of the Notification of Missing Requirements.

### DISCUSSION

A Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/903) is issued upon the determination by the United States DO/EO that the requirements under 35 U.S.C. 371 have been met. Applicants' submission of the national stage papers on 09 February 1998 satisfied all requirements under 35 U.S.C. 371 except 35 U.S.C. 371(c)(4), as applicants failed to provide the required oath or declaration.

Applicants' itemized receipt stamped by the U.S. Patent and Trademark Office with a 01 May 1998 date indicates that a signed declaration and a transmittal letter were filed that same date. This constitutes *prima facie* evidence that the signed declaration and transmittal letter were received in the United States DO/EO on 01 May 1998. See MPEP § 503.

The transmittal letter accompanying the petition, though not expressly authorizing the payment of the surcharge for late submission of a declaration required under 37 CFR 1.492(e), does include authorization "to charge payment of any additional fees associated with this communication" to Deposit Account No. 19-3700.

The declaration is deemed to comply with the requirements under 37 CFR 1.497(a) and (b). Accordingly, applicants have completed the last of the requirements under 35 U.S.C. 371(c) for entry into the national stage on 01 May 1998. It is noted, however, that there is a minor inaccuracy appearing in the declaration. Specifically, the declaration refers to the correct international application number, but incorrectly identifies the filing date as 07 August 1996, rather than 06 August 1996. Accordingly, pursuant to 37 CFR 1.67(a), applicants will need to submit a supplemental oath or declaration correcting this inaccuracy.

### DECISION

For the reasons above, applicants' petition is hereby **GRANTED** to the extent indicated below. In addition, the Notification of Missing Requirements Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US)(Form PCT/DO/EO/905) mailed 21 July 1998 is hereby **VACATED**.

Applicants are required to file a supplemental oath or declaration correcting the above-noted incorrect international filing date indicated on the original declaration within a time period of **ONE MONTH** from the date of this letter in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 C.F.R. § 1.136(a) or (b).**

Further national stage processing, including the mailing of a Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/903) assigning 35 U.S.C. 102(e) and 371 dates of **01 May 1998**, will be held in abeyance pending receipt of the required supplemental oath or declaration.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the PCT Legal Office.



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